* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ Bail Application No.2408/2005

% Date of Decision : 3rd July, 2007

\# AMIT RATHI .....Petitioner
! Through : Mr. R.K. Tomar, Adv.

versus

$
STATE .....Respondent
^ Through : Anil Soni, APP

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **B.N.CHATURVEDI, J.**

1. The petitioner is an accused facing trial alongwith his 10 co-accused in a case FIR No.253/2001, under Sections 302/307/34 IPC and Section 27 Arms Act, PS Parliament Street, relating to

murder of Smt.Phoolan Devi, a Member of Parliament (Lok Sabha) which took place on 25th July, 2001 around 1.30 p.m.

2. The petitioner, an arms dealer, allegedly sold an unlicensed .32 bore webley scot revolver and cartridges to his co-accused Sher Singh Rana which were used by his co-accused Dhan Prakash in commission of murder of Smt. Phoolan Devi. The petitioner was arrested on 2nd August, 2001 being a party to the criminal conspiracy hatched to commit murder of Smt. Phoolan Devi.

3. Pleading for bail, learned counsel for the petitioner argued that according to prosecution, the petitioner had supplied a revolver and cartridges to his co-accused Sher Singh Rana in the presence of one Afaq Ahmed—PW-70, an employee of petitioner at his gun shop. Learned counsel contended that in his entire statement before the Trial Court, PW Afaq

Ahmed did not support the prosecution case in regard to alleged supply of the revolver and cartridges to co-accused Sher Singh Rana by the petitioner. According to the learned counsel, PW Afaq Ahmed being the solitary witness, there is none else to support the prosecution case in regard to alleged supply of the revolver and cartridges to co-accused Sher Singh Rana by the petitioner. It was argued that the petitioner continues in custody ever since the date of arrest, i.e., 2nd August, 2001 and as out of 172 prosecution witnesses, only 86 PWs have been examined so far, it is unlikely that the trial would be concluded in near future. Learned counsel argued that since the only witness Afaq Ahmed—PW, who could have deposed against the petitioner, has already been examined, there is no possibility of petitioner tampering with evidence in case of his release on bail during the pendency of the trial.

4. Opposing the bail plea, learned Additional Public Prosecutor submitted that though Afaq Ahmed-PW did not depose before the Court in terms of his statement under Section 161 CrPC and omitted to state that the petitioner had supplied the revolver and cartridges to his co-accused Sher Singh Rana in his presence, missed calls to co-accused Sher Singh Rana, after the incident, being traced to the petitioner's mobile phone, clearly show his nexus with the said co-accused. On the count of delay in concluding trial, it was pointed out that since one of the co-accused Shravan had been absconding and could be arrested on 4th July, 2004 and later another co-accused Sher Singh Rana managed to escape from jail custody on 17th February, 2004 and could be re-arrested on 24th April, 2006 only, pace of the trial was retarded to a great extent.

5. A Status Report, regarding progress of trial,

was called from the Trial Court which indicates that out of 172 witnesses, statements of 86 prosecution witnesses had been recorded by 15th May, 2007. It is gathered that on a previous occasion while dismissing the bail applications of co-accused, a direction was issued to expedite the trial. It appears that inspite of such direction, the trial has not yet reached half way mark in terms of number of witnesses still left to be examined.

6. No doubt Afaq Ahmed—PW, the sole witness to alleged supply of revolver and cartridges by the petitioner to co-accused Sher Singh Rana, is found to have deviated from his statement under Section 161 CrPC while deposing before the Trial Court, evidentiary value of his testimony is yet to be evaluated in conjunction with other evidence, if any, brought forth by the prosecution which exercise is better left to the Trial Court. There being accusation

of the petitioner being a party to the alleged criminal conspiracy, entire prosecution evidence to be produced is to be kept in view to find the extent of complicity, if any, of the petitioner in the commission of the crime. The release of the petitioner on bail in the midst of trial when more than half the number of prosecution witnesses are yet to be examined would undoubtedly operate to the detriment of a fair trial. Hence, the bail plea of the petitioner cannot be granted.

7. The petition is, in the circumstances, dismissed. While doing so, it is once again impressed upon the Trial Court to endeavour in right earnest to conclude the trial expeditiously without undue loss of further time.

(B.N.CHATURVEDI)
July 3, 2007 JUDGE